

Tax Type: Property Tax
Issue: Charitable Ownership/Use

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 04-PT-0007
v.)	Tax Year 2003
)	
ILLINOIS MASONIC HOME)	
)	Dept. Docket # 03-70-12
Applicant)	

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; William J. Warmoth of Brainard Law Offices for Illinois Masonic Home.

Illinois Masonic Home (“applicant”) and the Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of the State of Illinois (“Grand Lodge”) filed an application for a property tax exemption for the year 2003 for three parcels of property located in Moultrie County. The Department of Revenue (“Department”) denied the application, and the applicant timely protested the denial. An evidentiary hearing was held during which the issue presented was whether the applicant’s housing for its independent living program, which consists of apartments and duplexes, qualified for the

charitable purposes exemption because it is used for charitable purposes. After the hearing, a recommendation was submitted to the Director finding that the property does not qualify for the exemption.¹ The Director accepted the recommendation, and the applicant filed a Request for a Rehearing. After the rehearing request was denied, the applicant pursued its rights to administrative review. On February 3, 2006, Judge Dan L. Flannell entered an Order in the Circuit Court for the Sixth Judicial Circuit, Moultrie County, which remanded the case for the Department to “conduct a rehearing and re-open the proofs to allow the plaintiffs to supplement the prior testimony of Robert Disbrow with additional financial data and other evidence that existed or could have been produced when the plaintiffs filed their Request for a Rehearing before the Department.” Mr. Disbrow was one of the applicant’s auditors. On July 20, 2006, a rehearing was held during which the applicant presented evidence from its controller. After reviewing the new evidence, in addition to the previous evidence, it is recommended that the exemption be denied.

ADDITIONAL FINDINGS OF FACT:

1. For fiscal year ending August 31, 2003, the applicant’s expenses relating to its duplexes exceeded its revenue from the duplexes by \$50,897. For fiscal year ending August 31, 2004, the deficit was \$40,355. For fiscal year ending August 31, 2005, the deficit was \$89,915. (App. Ex. #18; Tr. pp. 14-15)
2. For fiscal year ending August 31, 2003, the applicant’s expenses relating to its apartments exceeded its revenue from the apartments by \$133,027. For fiscal year ending August 31, 2004, the deficit was \$196,911. For fiscal year ending August 31, 2005, the deficit was \$205,400. (App. Ex. #18; Tr. p. 16)

¹ A copy of the initial recommendation is attached as an appendix.

CONCLUSIONS OF LAW:

In the initial recommendation, several reasons were provided for denying the exemption. One of the reasons was that although the applicant argued that the income from its independent living units was less than the expenses related to those units, the applicant did not separately account for the expenses related to the independent living units. It was found that the applicant did not present clear and convincing evidence to show that the money received from the fees for the units was not sufficient to support the independent living program.

During the rehearing, the applicant's controller testified that he began working for the applicant in June 2005, and he implemented a system for allocating the expenses and revenue associated with each level of care. The system was implemented for fiscal year 2005, and the controller applied the allocation criteria retroactively to prior fiscal years. (App. Ex. #18; Tr. p. 10) The information presented indicates that the applicant did not generate a profit from the independent living program during the year at issue.

Although the applicant has provided evidence that the independent living units did not generate a profit, our Supreme Court has stated that if property "is let for a return, it is used for profit, and * * * it is immaterial whether the owner actually makes a profit or sustains a loss." Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144 (1934). The residents in the present case must initially pay a substantial fee for the use of the units, and they also must pay a monthly maintenance fee that is due in advance at the beginning of each month. When the residents vacate the premises, only a

portion of the initial fee is refunded, without interest. The portion of the initial fee that is refunded decreases when the period of time that a resident stays in the apartment or duplex increases. The applicant did not explain why only a portion of the initial fee is refunded, and nothing of record indicates that the initial fees cannot be raised for new residents or that the monthly assessments cannot be raised for any or all residents. Despite a provision in its bylaws that indicates that the applicant will waive fees, the testimony during the first hearing revealed that the initial fee is not waived (Tr. pp. 37-38), and none of the residents in the independent living units receives assistance from the Endowment Assistance Program.

In addition, as stated in the initial recommendation, the initial fee varies depending on the size and desirability of the unit. The residents must complete an application that shows that they have the financial and physical ability to reside in the units. The applicant does not have a legal obligation to keep anyone in the units, and once a resident is there, he or she may be removed from the unit and transferred to one of the traditional units for failure to pay the fees.

These facts are not indicative of a charitable purpose and do not support a finding that the primary use of the apartments and duplexes is charitable. The primary use of the apartments and duplexes is to provide housing for elderly residents who can pay for it. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist. 1995). Because all doubts must be resolved in favor of taxation, it must be found that the property is not exempt.

Recommendation:

For the foregoing reasons, it is recommended that the exemption be denied.

Linda Olivero
Administrative Law Judge

Enter: November 1, 2006